No. _____

In The
Supreme Court of the United States

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the Commonwealth of the Northern Mariana Islands retain possession of the submerged lands that connect and surround the islands of the Commonwealth through the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" particularly in light of the fiduciary duties owed by the United States?

LIST OF PARTIES TO THE PROCEEDING

The parties to the proceeding are:

(1) Commonwealth of the Northern Mariana Islands and

(2) United States of America.

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BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Ninth Circuit entered its judgment on February 24, 2005. App. 1. Petitioner Commonwealth of the Northern Mariana Islands ("Commonwealth") seeks review of that judgment on a writ of certiorari.

On April 15, 2005, the Commonwealth timely filed a petition for rehearing en banc in the Court of Appeals. On July 8, 2005, the Court of Appeals filed an order denying both the petition for rehearing and the petition for rehearing en banc. App. 81. The present petition is timely filed under 28 U.S.C. § 2101(c) and under Rule 13 of this Court.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review on a writ of certiorari the judgment of a federal court of appeals.

STATUTORY PROVISION INVOLVED IN THE CASE

"Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America." 48 U.S.C. § 1801, Pub.L.No. 94-241, § 1, Mar. 24, 1976, 90 Stat. 263. App. 82.

STATEMENT OF THE CASE

The Commonwealth of the Northern Mariana Islands filed this case to quiet title to the "submerged lands" surrounding and connecting its islands. The United States District Court for the Northern Mariana Islands had jurisdiction over the dispute pursuant to 28 U.S.C. § 1346(f) and Section 903 of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," 48 U.S.C. § 1801, Pub.L.No. 94-241, § 1, Mar. 24, 1976, 90 Stat. 263 (the "Covenant"). The decision of the Ninth Circuit ignored the fiduciary duties of the United States and has erroneously left the Commonwealth with practically none of the submerged lands that connect its islands.

An understanding of this case requires a brief summary of the history of the Commonwealth and the position of the Commonwealth with respect to the federal government. "The Commonwealth of the Northern Marianas . . . has a unique political status which makes this case different from any that might arise in a territory of the United States." *Barusch v. Calvo*, 685 F.2d 1199, 1202 (9th Cir. 1982).

Lying on the crest of the Mariana submarine ridge at the western boundary of the Pacific Ocean, the sixteen

islands of the Commonwealth occupy a total dry land area of approximately 184 square miles. People of Chamorro and Carolinian descent have inhabited the largest three islands in the chain – Saipan, Rota, and Tinian – for centuries. The total territory claimed by the Commonwealth under its laws, including a 200-mile zone of ocean surrounding the islands, is 264,000 square miles. Dry land constitutes approximately 0.1% of this total. The Commonwealth's claims are set forth in the Commonwealth's Submerged Lands Act in 1979, 2 N. Mar. I.Code §§ 1211-1231, and its Marine Sovereignty Act of 1980, 2 N. Mar. I.Code §§ 1101-1143. The ocean and its resources have always played a key role in the lives of the people of this island community.

Following World War II, "the United States and the Security Council of the United Nations entered into a Trusteeship Agreement under which the United States accepted administrative responsibility for the people of Micronesia [including the Northern Mariana islands]." *Temengil v. Trust Territory of the Pacific Islands*, 881 F.2d 647, 649 (9th Cir. 1989), *cert. denied*, 496 U.S. 925 (1990). Under the Trusteeship Agreement, the "paramount duty of the United States was to steward Micronesia to self government." *Id.* The Trust Agreement also obligated the United States to "promote the economic advancement and self-sufficiency of the inhabitants . . . [and] protect the inhabitants against the loss of their lands and resources. . . ." App. 101, Art. 6.2. The United States held all the property interests of the people of the Trust Territory in trust on their behalf. App. 99, Art. 2, 3.

The United States and the Northern Mariana Islands reached an agreement to form the Commonwealth on February 15, 1975. That mutually binding agreement was

set forth in the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America." The voters of the Commonwealth approved the Covenant in 1975 and the U.S. Congress enacted it into law in 1976. App. 3 (citations omitted). The people of the Commonwealth remained under the Trusteeship until 1986 when the Covenant was fully implemented. App. 4 (citing *Sagana v. Tenorio*, 384 F.3d 731, 733-34 (9th Cir. 2004), *cert. denied*, 125 S. Ct. 1313 (2005)). In other words, a trustee-beneficiary relationship existed between the United States (trustee) and the people of the Northern Marianas (beneficiaries) throughout the Covenant negotiations, the vote on the Covenant, and its implementation.

"The Covenant has created a 'unique' relationship between the United States and the CNMI, its provisions alone define the boundaries of those relations." *United States ex rel. Richards v. Guerrero*, 4 F.3d 749, 754 (9th Cir. 1993) (citing *Commonwealth of the Northern Mariana Islands v. Atalig*, 723 F.2d 682, 687 (9th Cir. 1984), *cert. denied*, 467 U.S. 1244 (1984)). The United States did not assume absolute dominion over the Commonwealth through the Covenant. The Covenant established the United States' sovereignty over the Commonwealth while preserving specific areas of self-governance. App. 82, §§ 101, 103; *United States ex rel. Richards*, 4 F.3d at 754 ("the authority of the United States towards the CNMI arises solely under the Covenant."). The Covenant granted United States citizenship to the indigenous residents of the Commonwealth and afforded them all of the privileges and immunities of that citizenship. App. 83-84, §§ 301-304. Commonwealth residents are not, however, represented in